

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

MICHAEL KEITH BROOKS,

Plaintiff,

v.

MILWAUKEE COUNTY SHERIFF'S
DEPARTMENT, ARMOR CORRECTIONAL
SERVICES, DAVID CLARK JR., SCHMIDT,
JOHN DOE #1, JOHN DOE #2, MATEO,
ARTUS, DILLION, JOHNSTON,
ERICKSON, RUIZ, AMY, JACKIE,
BRANDON,

Defendants.

Case Number 18-cv-1767

Judge

DEFENDANT BRANDON DECKER'S MOTION TO EXTEND MOTION DEADLINE

Defendant, BRANDON DECKER (“Defendant”), by and through his attorneys, CASSIDAY SCHADE LLP, states the following in support of his Civ. L. R. 7(h) Motion to Extend the deadline to file a Motion to Dismiss on Exhaustion Grounds:

ARGUMENT

1. The current deadline to file a Motion to Dismiss for Plaintiff’s failure to exhaust administrative remedies is December 12, 2019. (Dkt. 21).
2. The Prisoner Litigation Reform Act (“PLRA”) requires Plaintiff to properly exhaust all available administrative remedies *prior* to filing suit in federal court. 42 U.S.C. § 1997e(a).

3. To enable Defendant to consider filing the Motion to Dismiss Defendant must first obtain the inmate grievances to determine if Plaintiff exhausted his administrative remedies prior to filing suit.
4. A suit filed by a prisoner “before administrative remedies have been exhausted must be dismissed; the district court lacks jurisdiction to resolve the claim on the merits.” *Perez v. Wis. Dep’t of Corrections*, 182 F.3d 532, 535 (7th Cir. 1999).
5. Defendant filed its Answer to Plaintiff’s Amended Complaint on November 8, 2019, in which Defendant pled, as an affirmative defense, that Plaintiff may have failed to exhaust administrative remedies.
6. Defendant has made efforts to obtain the inmate grievances filed by Plaintiff from the Milwaukee County Sheriff’s office. The custodian of such records have acknowledged receipt of Defendant’s request and advised that she is in the process of compiling and sending the requested materials but as of this day the same has not been received.
7. Defendant’s counsel attempted to obtain the necessary materials from other counsel involved in the case, namely, Milwaukee’s Corporation Counsel who has agreed to provide the necessary materials and attempted to do so but upon reviewing the materials she received identified missing information or documentation. Accordingly, she has requested the complete materials and agreed to provide the same to counsel upon receipt but the same, as of this day, has not yet been received.
8. Plaintiff would not be prejudiced by an extension of the deadline in which to file a Motion to Dismiss on exhaustion grounds as it is early in the proceedings and the relief requested would not impact any other dates or deadlines.

9. Accordingly, as efforts have been made to comply with the Court's Scheduling Order and the deadline to file a Motion to Dismiss on exhaustion grounds, but despite those efforts the materials necessary to file the motion have not been received, Defendant requests that the deadline for the Motion to Dismiss be extended thirty days.

WHEREFORE, Defendant, BRANDON DECKER, requests this court extend the deadline to file a Motion to Dismiss on exhaustion grounds from December 12, 2019 to January 12, 2020.

Respectfully submitted this 10th day of December, 2019,

CASSIDAY SCHADE LLP

By: /s/ **John J. Reid**
One of the Attorneys for Defendant,
BRANDON DECKER

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